## IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

TOY COURT BY OF MISS

IN RE: SHIRLEY ROOKER

NO. 04-16621

ogt 28 SAN: 23

GREEN TREE SERVICING, LLC

**MOVANT** 

VS.

# SHIRLEY ROOKER, DEBTOR AND LOCKE D. BARKLEY, TRUSTEE

RESPONDENTS

#### MOTION TO ABANDON COLLATERAL AND LIFT STAY

Green Tree Servicing, LLC ("Green Tree") brings this motion to abandon collateral pursuant to 11 U.S.C. § 554 and to lift and terminate the automatic stay of 11 U.S.C. § 362 and for cause would show as follows.

- 1. Debtor is indebted to Green Tree under a Retail Installment Contract and Security Agreement ("Contract"). A copy of the Contract is attached as Exhibit "A".
- 2. As collateral for the indebtedness due, Debtor pledged to Green Tree a 1997 Riverchase Homes Manufactured Home, including certain furniture, fixtures, appliances and appurtenances therein ("Manufactured Home"). A copy of the UCC financing statement evidencing Green Tree's lien on the Manufactured Home is attached as Exhibit "B".
  - 3. Debtor proposes to abandon the Manufactured Home.

WHEREFORE, PREMISES CONSIDERED, Green Tree Servicing, LLC requests that this Court abandon Green Tree's collateral pursuant to 11 U.S.C. § 554, lift and terminate the automatic stay of 11 U.S.C. § 362 to allow Green Tree to immediately proceed to repossess and liquidate its collateral and grant such other relief as is necessary under the circumstances.

DATED: October 27, 2004.

GREEN TREE SERVICING, LLC

lts Attorney

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### **CERTIFICATE OF SERVICE**

I mailed a copy of the foregoing motion to Karen B. Schneller, P.O. Box 417, Holly Springs, MS 38635; Locke D. Barkley, Chapter 13 Trustee, P.O. Box 4476, Jackson, MS 39296 and the Office of the U. S. Trustee, Suite 706, 100 W. Capitol St., Jackson, MS 39269 on October 27, 2004.

Jeff D. Rawlings

Jeff D. Rawlings Rawlings & MacInnis, P.A. P.O. Box 1789 Madison, MS 39130-1789 601-898-1180 MSB # 4642

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LLER: BRITT MOB	ILE HOMES, INC., PO B	OX 386, OXFORD, HS 1865	<u> </u>	······		
SIGNEE: GREEN TRE	E FIHANCIAL SERVICINO	CORPORATION, PO BOX 13	767, JACKSON, MS	19236		
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option of having the Manufactured Home for the cash prime by 18 (2011) The fan, tied down PURCHASE: I have the option of buying the Manufactured Home for the cash price or buying on credit. The cash price is shown on page 1 as the "Cash Sale Price", and the credit price is shown on page 1 as the "Total Sale Price". I choose to buy on credit.

Manufactured Home and any oversets added as attented to be applicable certificate of title law or Uniform Commercial Code in the 3. SECURITY INTEREST: I give you a security interest under the applicable certificate of title law or Uniform Commercial Code in the Manufactured Home and any property added or attached to it, to secure my obligation under this Contract. I also grant you a security interest in any application for certificate of title or ownership, financing statement or other document necessary to perfect your security constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in the applicable jurisdiction) no security PAYMENTS AND LATE CHARGE: I will pay you the amount shown as the "Total of Payments" according to the payment schedule 4. PAYMENTS AND LATE CHARGE: I will pay you the amount shown as the "Total of Payments" according to the payment schedule shown on page 1. I also agree to pay a late charge for late payment as shown on page 1.

5. PREPAYMENT: I HAVE THE RIGHT TO PREPAY ALL OR PART OF THE UNPAID BALANCE OF THIS CONTRACT WITHOUT ANY PENALTY. SIMPLE INTEREST CONTRACT: This is a simple interest contract. The interest rate is Interest will accrue upon the unpaid principal balance outstanding from time to time. The Finance Charge, Total of Payments and payments will reduce my final nayment I are nayments will increase my final nayment I are nayments will increase my final nayment. Early Payment Schedule were computed based on the assumption that payment will be made on the dates scheduled for payment. Carry payments will reduce my final payment. Late payments will increase my final payment. My final payment will be equal to all unpaid naument differe from the amount of the final payment on the date due even if the amount of the final payment. payment ditters from the amount of the final payment disclosed.

7. NO !VARRANTIES: I agree that there are no warranties of any type covering the Manufactured Home. I am buying the Manufactured Home AS IS and WITH ALL FAULTS and THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE MANUFACTURED HOME IS WITH ME. I agree that any implied warranty of merchantability and any implied warranty of fitness for a next included and do not cover the Manufactured Home. This No Warranties provision does not apply to particular purpose are specifically excluded and do not cover the Manufactured Home. This No Warranties provision does not apply to particular purpose are specifically excluded and do not cover the Manufactured Home. This No Warranties provision does not apply to the extent that any law prohibits it and it does not cover any separate written warranties.

B. PROTECTION OF THE MANUFACTURED HOME: I will: (a) keep the Manufactured Home in good condition and not commit waste; (b) pay all taxes, charges and lot rent due for the Manufactured Home and the real estate it is located on; (c) not move, use illegally, sell, lease or otherwise transfer the Manufactured Home: (d) not attach the Manufactured Home to anyl real estate and the tot pay an taxes, unarges and for rent due to: the minutactured nome and the real estate it is located on, for injurity use inageny, sell, lease or otherwise transfer the Manufactured Home; (d) not attach the Manufactured Home to any real estate and the Manufactured Home will always he treated so normal property volcas you concent in writing and state law bermite such contrary Manufactured Home will always be treated as personal property unless you consent in writing and state law permits such contrary manufactured rights will always be treated as personal property unless you conserved treatment; and (e) not let anybody else have any interest in the Manufactured Home. INSURANCE: I will keep the Manufactured Home insured against such risks and in such amounts as you may reasonably require 9. INSUHANCE: I will keep the Manufactured Home insured against such risks and in such amounts as you may reasonably require with an insurance company satisfactory to you. I will arrange for you to be named as loss payee on the policy. I agree to provide you repay you for the cost of that insurance, plus interest up to the contract rate of interest. I authorize you to furfish account data to a licensed insurance agent of your choice so such agent may solicit the purchase of credit, property, warranty oil other insurance from repay you for the cost of that insurance, plus interest up to the contract rate of interest. I authorize you to furnish account data to a licensed insurance agent of your choice so such agent may solicit the purchase of credit, property, warranty or other insurance from me. I agree that the insurance company may make any payments due under the policy directly to you, and I direct the insurance from Manufactured Home or pay off this Contract. I give you a power of attorney (which I cannot cancel) so that you may do whatever you to be named as loss navee, you may treat that as a default of my obligations under this Contract, and you may (but are not need to in order to collect the insurance proceeds. If I fail to obtain, maintain or pay for the required insurance, of if I fail to arrange for you to be named as loss payer, you may treat that as a default of my obligations under this Contract, and you may (but are not required to) purchase such insurance. If you purchase such insurance, I will immediately repay you for any (but are not obligation. If I owe you for any insurance for for late charges, attorney fees or collection, pay you over time as a workout of the sum of these debts beyond my monthly principal and interest payment. My monthly payment will therefore be gleater than that stated sum for these debts beyond my monthly principal and interest payment. My monthly payment will therefore be gleater than that states an page 1 until such additional debts are paid in full.

10. DEFAULT: I will be in default if: (i) I do not make a payment on time; or (ii) I do not keep any of my other promises under this contract; or (iii) I file a case, or someone else files a case against me, under the United States Bankruptcy Code; or (iv) you feel in good faith that the Manufactured Home is in danner or that I will not be able to continue my payments. The default described under (iv) does Contract: or (iii) I file a case, or someone else files a case against me, under the United States Bankruptcy Code; br (iv) you feel in good faith that the Manufactured Home is in danger or that I will not be able to continue my payments. The default described under (iv) does voluntarily surrender or abandon the Manufactured Home. I will have the right to cure the default described under (iv) does cure the default, you may do either or both of the following: (a) Acceleration: You can require me to immediately pay you the entire the Manufactured Home you may sell it. If the amount from the sele, after expenses, is less than what I owe you, I will pay you the entire default, you can do whatever is necessary to correct my default. If you spend money to correct my default, I will pay you back default, you can do whatever is necessary to correct my obtault. If you spelld money to correct my obtaut, if you spelld money to correct my obtaut. If you spelld money to correct my obtaut, if you spelld money to correct my obtaut. If you spelld money to correct my obtaut, if you spelld money to correct my obtaut. If you spelld money to correct my obtaut, if you spelld money to correct my obtaut. If you spelld money to correct my obtaut, if you spelld money to correct my obtaut. If you spelld money to corect my obtaut. If you spelld money to correct my obtaut. If you s at such other address as I may designate by notice to you in writing, and (b) any notice to you shall be given in writing by certified mail, return receipts required to your address estated baselons to each other address as your may designate by notice to you in writing the certified mail. at such other address as I may designate by notice to you in writing, and to) any notice to you shall be given in writing by continue mail, return receipt requested, to your address stated herein or to such other address as you may designate by notice to me in writing. mail, return receipt requested, to your address stated herein or to such other address as you may designate by notice to me in writing. 12. ATTORNEY'S FEES: It you hire an attorney who is not a salaried employee to collect what I owe under this Contract or to get plus court costs and actual out-of-pocket expenses. If state law provides for a limit on attorney's fees, I will pay provide attorney's fees. It will pay provide attorney's fees, I will pay provide not to use or enforce any of your rights under this Contract without losing them. For example, you can extend the prohibits it, all other parts can still be enforced. I agree to pay you all allowable charges for the return by a depository institution of any requests after closing to correct errors made concerning this Contract or the transaction and to provide any and all additional and additional and additional provides. documentation deemed necessary by you to complete this transaction.

14. ARBITRATION: All disputes, claims or controversies arising from or relating to this Contract or the parties thereto shall be resolved by binding arbitration by one arbitrator selected by Assignee with consent of Buyer(s). This agreement is made pursuant to a award rendered may be entered in any court having jurisdiction. The parties agree and understand that they chaose arbitration instead transaction in interstate commerce and shall be governed by the Federal Arbitration Act at 9 U.S.C. Section 1. Judgment upon the award residered may be entered in any court having jurisdiction. The parties agree and understand that they chapse arbitration instead of litigate disputes in court, but that they prefer to their disputes through arbitration, except as provided herein. THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY Banbara Systems, Inc., St. Cleus, MW 11-800-387-23411 Form GT-MHRCLAZ-1 8/22/85 GT-10-00-110 (4/95) \_ (page 2 of 3)

Case 04-16621 Doc 6 Filed 10/28/04 Entered 10/28/04 14:04:00 Descrivering RIGHT THEY HAVE TO A JURY TRI STITLL URSUANT TO ARBITRATION UNDER TO A JURY TRI STITLL URSUANT TO ARBITRATION UNDER TO A JURY TRI STITLL URSUANT TO ARBITRATION UNDER TO A JURY TRI STITLL URSUANT TO A COURT ACTION BY ASSIGNEE (AS PROVIDLE IEREIN). The parties agree and understand that the arbitrator shall have all powers provided by the law and the Contract. These powers shall include all legal and equitable remedies including, but not limited to, money damages, declaratory relief and injunctive relief. Notwithstanding anything hereunto the contrary, Assignee retains an option to use judicial (filing a lawsuit) or non-judicial relief to enforce a security agreement relating to the Manufactured Home secured in a transaction underlying this arbitration agreement, to enforce the monetary obligation secured by the Manufactured Home or to foreclose on the Manufactured Home or to provide the security. institution and maintenance of a lawsuit to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Contract, including the filing of a counterclaim in a suit brought by Assignee pursuant to this provision.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

NOTICE TO BUYER: 1. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. 2. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT.

BUYER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.

Signature of Buyer Signature of Buyer SHIRLEY ROOKER

#### **ASSIGNMENT BY SELLER**

Saller hereby sells, assigns and transfers its entire right, title and interest in the Contract and the property described therein (the "Property") to Saler harely sens, assigns and transfers its entire right, the and interest in the Contract and the property described injection there is a state and enforceable and arose from the sale of the Property; (b) the Contract is subject to no defense, counterclaim or setoff; (c) copies of the Contract and all other documents signed by the Buyer(s) were given to the Buyer prior to consummetion; (d) Seller has complied with all applicable federal, state and local laws, regulations, rules and ordinances; (e) the Buyer is not a minor and has legal capacity to execute this Contract; (f) the Property is free and clear of all liens and encumprances except the security interest granted herein and Seller has the right to assign its interest in the Contract; (g) the security interest granted to Seller constitutes a valid first lien on the Property and has been filled or recorded according to law indicating Assignee as security interest granted to Seller constitutes a valid first lien on the Property and has been filled or recorded according to law indicating Assignes as first secured party; (h) the down payment shown on the face hereof has been received and no part thereof was advanced directly or indirectly by Seller to Buyer; (i) all statements of fact made by the Contract and all statements made by or on behalf of the Buyer in the credit applications and any other forms relating to the Contract are true to the best of Seller's knowledge and belief; (j) Buyer has physical damage insurance in the amount of the indebtedness; (k) there have been no material changes in the Buyers' income, Indebtedness or employment and no other material changes between loan approval and funding. This is a condition to Assignee funding the Contract. If there is a breach of any of the foregoing warranties, as solely determined by Assignee, without regard to the Seller's knowledge with respect thereto or Assignee's relience thereon, Seller agrees unconditionally to repurchase the Contract from Assignee, upon demand, for the full amount then unpaid plus costs and expenses incurred by Assignee (plus accrued and unpaid interest), whether the Contract shall then be, or not be, in default, and to indemnify, defend and hold Assignee harmless from any loss, damages or claims of any nature by reason of such breach of warranty, including attorneys' fees, court costs, disbursements and out-of-pocket appears.

Seller further agrees that in the event Buyer asserts against Assignes any claim, defense or counterclaim against payment of any sum owing under the Contract or in defense of repossession on the assertion, either oral or written, that the Property is detective, not as represented to Buyer by Seller or that Seller refuses to honor any warranty or service agreement of Seller or the manufacturer, Sellor will, upon Assignes's demand, repurchase the Contract from Assignes and pay Assignes the full amount remaining unpaid (plus accrued and unpaid interest) plus Assignes's costs and expenses including attorneys' fees, whether or not any such claim, defense or counterclaim shall be meritorious and without awaiting adjudication of Buyer's claim, defense or counterclaim; and Seller size agrees to indemnify, defend and hold Assignes harmless from any such claims, including attorneys' fees, court costs dehursements and out-of-notes agrees.

The liability of Seller shall not be affected by any extension, renewal or other change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party fiable for payment thereof, or the release or non-perfection of any security thereunder. Assigned shall not be bound to exhaust its recourse against Buyer or any other person or any security before being entitled to payment by the Seller hereunder. Seller waives notice of securities and other persons or any security before being entitled to payment by the Seller hereunder. Seller waives notice of securities and other persons or any security before being entitled to payment by the Seller hereunder. Seller waives notice of securities and only other persons or any security before being entitled to payment by the Seller hereunder.

hereunder. Seller waives notice of acceptance of this Agreement and notices of nonpayment and nonperformance of the Contract and any other notices required by law and waives all setoffs and counterclaims.

In addition, this Assignment includes that certain provision to follow, provided that, if none of the following provisions has been checked by the Seller, this Assignment shall be considered to have been checked "With Recourse": A. "Without Recourse". The assignment of the Contract is and shall be without recourse against the Seller except as provided above and in any separate dealer agreement between Seller and Assignee relating to the purchase of Contracts. B. "Limited Recourse". In the event of default of Buyer before Buyer shall have paid the number of monthly payments under the Contract as sat forth below under "Limited Recourse", the Seller will, upon demand, repurchase the Contract from Assignee for the full amount remaining unpaid under the Contract from the Assignee." If the Assignee repossesses the Manufactured Home, the Seller will, upon demand, repurchase the Contract from the Assignee, upon demand, or the full amount remaining unpaid under the Contract and agrees to purchase the Contract from the Assignee, upon demand, for the full amount then unpaid, whenever the Contract shall be in default. E. "Limited Repurchase". In the event of default of Buyer before Buyer shall have paid the number of monthly payments under the Contract as set forth below under "Limited Repurchase", the Seller will, upon demand, repurchase the Contract from the Assignee for the full amount remaining unpaid under the Contract if the Assignee repossesses the Manufactured Home.

Seller, by signing below, executes this Contract and also assigns the same to the Assignee in accordance with the foregoing provisions, The Seller's Assignment will also include that certain provision set forth above which is checked below:

BRITT MOBILE/HOMES./[INC.   DOING (Sell	ler) Title:	· ·	
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October 27, 2004

Mr. Joseph Wroten, Clerk U. S. Bankruptcy Court Federal Building 301 Commerce Street Aberdeen, MS 39730-0867

In Re: Shirley Rooker

Bankruptcy Number 04-16621 Green Tree Servicing, LLC v. Shirley Rooker, Debtor Locke D. Barkley, Trustee

Dear Mr. Wroten:

Please find enclosed the original and one copy of a Motion to Abandon Collateral and Lift Stay regarding the referenced proceeding and our firm check for your filing fee. Please file the original and return a stamp filed copy to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely

Angie Stepp Legal Assistant

JDR/as Enclosures

cc.

Karen B. Schneller, Attorney Locke D. Barkley, Trustee Office of the U. S. Trustee